MISSOURI COURT OF APPEALS
WESTERN DISTRICT

**STATE OF MISSOURI EX REL.
DWIGHT K. SCROGGINS, JR.,
BUCHANAN COUNTY PROSECUTING
ATTORNEY**

RELATOR,

v.

**THE HONORABLE DANIEL F. KELLOGG,
JUDGE OF THE CIRCUIT COURT OF
BUCHANAN COUNTY, MISSOURI,
DIVISION IV**

RESPONDENT.

DOCKET NUMBER WD73178
DATE: February 8, 2011

Appeal From:

Buchanan County Circuit Court
The Honorable Daniel F. Kellogg, Judge

Appellate Judges:

Writ Division: Cynthia L. Martin, Presiding Judge, Karen King Mitchell and Gary D. Witt, Judges

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Attorneys:

Ronald R. Holliday, St. Joseph, MO, for relator.

Jeffrey Wayne Cornelius, Respondent Pro Se.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI EX REL.
DWIGHT K. SCROGGINS, JR.
BUCHANAN COUNTY PROSECUTING ATTORNEY,

RELATOR,

v.

THE HONORABLE DANIEL F. KELLOGG,
JUDGE OF THE CIRCUIT COURT OF
BUCHANAN COUNTY, MISSOURI
DIVISION IV,

RESPONDENT.

No. WD73178 Buchanan County

Before Writ Division Judges: Cynthia L. Martin, Presiding Judge, Karen King Mitchell and Gary D. Witt, Judges

Original proceeding in mandamus or in the alternative prohibition. Relator State of Missouri ex rel. Dwight K. Scroggins, Jr. seeks a writ of mandamus or in the alternative prohibition requiring the Respondent, the Honorable Daniel F. Kellogg, Circuit Court of Buchanan County, Missouri, to vacate and/or to not enforce an October 7, 2010 Order granting Jeffrey W. Cornelius credit for time spent by Cornelius on probation from February 13, 2003, until his probation was revoked on June 14, 2004, a total of 852 days. Respondent contends he was authorized by Section 559.100.2 to afford this credit, notwithstanding the previous finality of Cornelius's judgment of conviction and sentence.

PEREMPTORY WRITS OF PROHIBITION AND MANDAMUS ISSUED; REMANDED.

Writ Division holds:

(1) Once a judgment and sentence become final in a criminal proceeding, a trial court can take no further action in the case except when expressly authorized by statute or rule.

(2) Section 559.100.2 authorizes a trial court to exercise its discretion to credit any period of probation or parole as time served on a sentence. Reading section 559.100 as a whole, the legislature intended this discretion to be exercised, if at all, at the time of execution of a sentence as a result of the revocation of probation or parole. Section 559.100.2 does not permit a trial court freestanding authority to afford credit against a sentence for time spent on probation or parole after the sentence has become final.

(3) This construction of section 559.100 is consistent with section 559.036.3, which also describes a trial court's authority, upon the revocation of probation, to mitigate any sentence of imprisonment imposed by reducing the prison or jail term by all or part of the time a defendant was on probation. The predecessor to section 550.036, section 549.101, was repealed as a part of adoption of the new Criminal Code effective January 1, 1979. At that time, comments to the new Criminal Code suggested the authority to mitigate a sentence for time spent on probation or parole discussed in both statutes had to be exercised at the time anticipated by the statute, or there is no mitigation, strongly suggesting the trial court's authority to afford credit is temporally limited.

(4) The redundancy between section 559.036.3 and section 559.100.2 suggest the provisions were meant to be similarly construed to avoid absurd and inconsistent results turning upon which statute might be relied upon by a probationer seeking credit against a sentence.

(5) When the legislature has desired to afford a trial court the express authority to take action with respect to a final judgment and sentence, it has done so with unequivocal language, as in section 559.115.2, which permits a trial court to grant probation to an offender up to 120 days after an offender has been delivered to the department of corrections.

(6) In contrast, section 559.100.2 does not expressly authorize a trial court to afford credit against a sentence after it has become final. The implication of such authority is inconsistent with the directive that once a judgment and sentence become final in a criminal proceeding, a trial court can take no further action in the case except when ***expressly*** authorized by statute or rule.

Opinion by: Cynthia L. Martin, Judge February 8, 2011

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